HJ. OSMAN HJ. AROFF & ANOR.

v.

ABDUL KARIM PIN

SUPREME COURT, KUALA LUMPUR
SALLEH ABAS LP
GEORGE SEAH SCJ
SYED AGIL BARAKBAH SCJ
[CIVIL APPEAL NO. 373 OF 1986]
22 AUGUST 1987

ADMINISTRATIVE LAW: *Respondent played football for Kedah Football Association - Employed by Kedah Regional Development Authority - Respondent resigned from employment - Whether 24 hour letter of resignation effective - Respondent participating in football game outside State of Kedah - Disciplinary proceedings against respondent - Whether respondent still subject to jurisdiction of Kedah Football Association.*

LABOUR LAW: *Employment - Contractual relationship between respondent and Employer - Whether 24 hour letter of resignation effective.*

The respondent was employed by the Kedah Regional Development Authority (KEDA) whose sports club is an affiliate member of the Kedah Football Association (KFA). The respondent represented KEDA in soccer and from time to time has played for the Kedah state football team. On 3 December 1985 the respondent by way of a telex tendered a 24 hour notice of resignation with KEDA. On the evening of the same day, the respondent played a friendly game of football for Talasco Diadora against Cheq Point in Kuala Lumpur. On 13 December 1985 it was reported in the newspapers that the KFA Disciplinary Committee had imposed a ban on him from playing football for a period of five years effective from 3 December 1985. The respondent on 20 December 1985 wrote to the Secretary of KFA complaining *inter alia* that he had not been given any opportunity to appear and defend himself and that he intends to appeal against the decision. The respondent was informed by the 2nd appellant that it was not necessary for the respondent to defend himself. However after exchange of correspondence, the respondent was informed that his appeal would be heard by the KFA Disciplinary Board and he was requested to be present. After hearing the appeal the ban was reduced to 3 years. The respondent by Originating Summons applied to the High Court for a determination whether:

(a) at the time the infringement took place the respondent was still an employee of KEDA.

(b) if he was still an employee at that time, by virtue of the affiliation of KEDA with KFA, the respondent was still subject to the jurisdiction of the KFA and the Disciplinary Committee under Article 56 of the KFA Constitution.

The learned Judge came to the conclusion that the respondent's resignation on 3 December 1985 was valid. He gave judgment in favour of the respondent. Hence this appeal.

Held:

[1] There is no provision for the termination of service by giving twenty-four hour notice *simpliciter.*

[2] What was agreed upon was in the terms of employment agreement to pay back one month's net salary in lieu of notice. The respondent had therefore failed to comply with the terms of the agreement.

[3] Taking the above into consideration, the Court held that the respondent was still under the jurisdiction of KFA when the infringement took place and was subject to the Constitution of the KFA and therefore had to obtain the approval of KFA before participating in a football match outside the state of Kedah.

[4] The three-year ban against the respondent which took effect from 3 December 1985 should be effective within Kedah only. This is because the jurisdiction of KFA is limited to within the State.

[Appeal allowed with one-half costs only.]

For the appellants - E. Mayandi; M/s. Mayandi & Panjaram
For the respondent - Vincent Chandran (K. Manoharan with him); M/s. Mohamad Ibrahim & Co.

JUDGMENT

Syed Agil SCJ:

This is an appeal against the decision of the High Court Judge, Alor Setar, Kedah, made on 10 August 1986 in favour of the respondent and *inter alia* declaring that the decision of the Kedah Football Association (KFA) imposing a ban on the respondent from playing football for a period of three years is a nullity. The two appellants are the President and the Honorary Secretary of KFA respectively at the material time.

According to the undisputed facts, the respondent was employed by the Kedah Regional Development Authority (KEDA) as an assistant clerk at a monthly salary of RM370. KEDA is a body corporate with perpetual succession and a common seal established under the Lembaga Kemajuan Wilayah Kedah Act 1981 (Act 249). To enable its officers and employees to participate in sports activities, KEDA has established a sports club of its own and it possesses a constitution registered with the Registrar of Societies as Kelab Kebajikan Kebudayaan dan Sukan (KEDA CLUB). It is also an affiliate member of KFA and its team has participated in football matches organised by KFA within the State. The respondent represented KEDA in soccer and from time to time has played for the Kedah State football team.

On 3 December 1985 the respondent tendered notice of resignation with KEDA by sending a telex dated the same date in Bahasa Malaysia presumably from Kuala Lumpur. The telex reads as follows:

> I, Karim bin Pin do hereby tender my 24 hours resignation notice. In accordance to the terms of my employment I shall be forwarding my one month salary.
>
> Yours faithfully,
> Karim bin Pin.

On the evening of the same day, he played a friendly game of football for Talasco Diadora against Cheq Point in K.L. About ten days later, to his astonishment, the respondent discovered by reading in the Soccer Column of the New Straits Times and the Star Edition of 13 December 1985 that the KFA Disciplinary Committee had imposed a ban on him from playing football for a period of five years with effect from 3 December 1985. On 20 December 1985 he wrote a letter to the second appellant as the Secretary of KFA complaining *inter alia* that he had not been given any opportunity to appear and defend himself against the alleged charges against him and of his intention to appeal against the decision. he received a reply from the second appellant dated 22 December 1985 conveying the decision of the Disciplinary Committee and informing the respondent that in the Committee's view it was not necessary for the respondent to defend himself before the Committee:

Encik Karim bin Pin,
Talasco Insurance Sdn. Bhd.,
Bangunan Tuanku Abdul Rahman,
50100 Kuala Lumpur.

Re: Decision of the Disciplinary Committee of KFA on 12 December 1985 at 3.00 p.m. at Wisma Negeri, Alor Setar.

With due respect I enclose herewith the Decision of the Disciplinary Committee of KFA as mentioned above which contents are clear for your information.

The Disciplinary Committee of KFA is of the opinion before this that it was not necessary for your presence to defend yourself as the offence which was committed by yourself was publicised through the press and also was admitted by you personally with the meeting with me on 8 December 1985. It is understood, that the aforesaid Disciplinary Committee decision is based on facts which are clear and simple.

Thank you.

"Hail sport for the nation"

Yours faithfully,

Sgd.
(Dato' Ahmad bin Mohd. Akil, DSDK., BCK.)
Honourable Secretary,
Kedah Football Association.

The respondent was found to have contravened certain articles of the constitution of the KFA as indicated by the following allegations:

(1) firstly, by acting in a manner that is not in line with the discipline required of a State player, i.e., by failing to attend the State team training from 3 December till 12 December 1985 after his return from SEA games with the National team and in the circumstances failing to inform the KFA that he would be representing another team outside the State of Kedah and also participating in the competition under the name of the said team;

(2) that on 3 December 1985 acted against s. 49 of the Article of Association by participating in a competition outside the Kedah State and representing Talasco Diadora against Cheq Point at Stadium Merdeka, Kuala Lumpur without getting prior approval from KFA;

(3) that on the same date and time acted against s. 52 of the Article of Association of KFA by participating in a football match as stated in para (ii) above, wherein the proceeds of the gate collection was given to the Association Club or team represented or with other intention without the consent of the KFA.

After exchange of correspondence however, the respondent was informed by telex dated 1 January 1986 that his appeal would be heard by the KFA Disciplinary Board on 12 January 1986 at 2.30 p.m. He was requested to be present there to give further explanation and was furnished with a copy of the charges and findings of the Committee. According to the learned Judge, the respondent presented himself as requested and was given every opportunity of explaining himself by giving evidence in rebuttal. The Committee in fact reviewed his case, heard it *de novo* and concluded by an unanimous decision in reducing the five-year ban under Article 56 of the KFA Constitution to three years with effect from 3 December 1985. The Committee also held that pursuant to Article 44, a player who is banned in also prohibited

from playing football in any match or from officiating as a referee or a linesman. It was against that decision that the respondent applied by way of Originating Summons to the High Court, Alor Setar. The learned trial Judge was faced with two main issues: one of which was whether at the time the infringement took place the respondent was still an employee of KEDA. If the respondent was still an employee at that time, by virtue of the affiliation of KEDA with KFA, the respondent would still be subject to the jurisdiction of the KFA and the Disciplinary Committee under Article 56 of the Constitution.

It is to be noted that the relationship between the respondent and his employer KEDA was contractual. According to his employment agreement, the employer can terminate his service by serving three months' notice or in lieu thereof by paying him one months' salary without assigning any reasons. Likewise, the respondent may terminate his service with KEDA by giving three months' notice or in lieu of notice to pay back one month nett salary. (See pp. 152 - 154 Appeal Record, Vol. 3). Under the KEDA Club Rules Chapter 8(c), a member ceases to be a member of the Club if he leaves the service of KEDA. The telex message which the respondent sent to the General Manager of KEDA was a twenty-four hour notice of resignation without paying back one month's nett salary as required in the employment agreement. The learned Judge however took into account the November salary of the respondent which was available by 27 November 1985 and which the respondent had not yet drawn from KEDA and treated that as a set-off. He observed that the employer did not create any fuss or raise any objection to the respondent's resignation but rather wrote to him on 14 December 1985 stating that he had to pay back one month's salary amounting to RM370 in lieu of notice but deducted the sum of RM260.83 being the November salary which he has not taken and inclusive of other money which he still owed KEDA, the respondent had to pay the sum of RM2,169.75 as soon as possible. The respondent settled the required amount by cheque in his letter dated 28 December 1985. The learned Judge having considered the facts and circumstances as stated above came to the conclusion that the respondent's resignation on 3 December 1985 was valid and in pursuant to para (f) of his letter of appointment.

In doing so, the learned Judge had overlooked one vital point, in that there is no provision for the termination of service by giving twenty-four hour notice simpliciter. What was agreed upon was in the terms of employment agreement to pay back one month nett salary in lieu of notice. Whether or not the undrawn salary of an employee can be treated as a set-off in the circumstances of the case is a matter which we would prefer to be left open for future decision. The respondent had therefore failed to comply with terms of the agreement. Taking the above into consideration, we hold that the respondent was still under the jurisdiction of KFA when the infringement took place and was subject to the Constitution of the KFA. Under Article 49 of the Constitution as a football player and a member of an affiliated association, the respondent had to obtain the prior approval of KFA before participating in a football match outside the State of Kedah. He had failed to do so. It follows therefore that his purported resignation on 3 December 1985 was not valid.

We are further of the opinion that the three-year ban against the respondent which took effect from 3 December 1985 should be effective within Kedah only. This is because the jurisdiction of KFA is limited to within the State. Article 7(c) of the Constitution of the Football Association of Malaysia (FAM) in which the KFA is a member states *inter alia* ".....Each State Association shall cover a defined area and shall neither extend nor alter such area without having obtained the consent of the Council." The KFA has similar provision under Article 9(c) of its Constitution relating to its affiliated associations.

The appeal is allowed with one-half costs here only. The decision of the learned Judge is set aside and the decision of the KFA appeal committee is affirmed to the extent as ruled above.

The deposit is to be returned to the appellants.

Also found at [1988] 1 CLJ 473